

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of L. D. H., Minor.

UNPUBLISHED  
February 20, 2014

No. 316669; 316670  
Oakland Circuit Court  
Family Division  
LC No. 11-788378-NA

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Before: O'CONNELL, P.J., and WILDER and METER, JJ.

PER CURIAM.

Respondents (mother and father) appeal as of right the circuit court's order terminating their parental rights to their child under MCL 712A.19b(3)(c)(i) and (g). As against mother, the court also found clear and convincing evidence for termination under MCL 712A.19b(3)(j). The court further found that termination of both parents' rights was in the child's best interests under MCL 712A.19b(5). We affirm.

**I. FACTS AND PROCEDURAL HISTORY**

The child at issue in this case came into temporary wardship at age 3. At that time, neither parent was able to care for the child: mother had substance abuse and mental health problems that rendered her unable to provide care; father was incarcerated on a probation violation. The court took continued jurisdiction over the child, and both parents acknowledged the allegations that supported jurisdiction. The parents signed agency agreements that required them to submit to regular drug screens and to maintain safe and suitable housing, among other things. Petitioner placed the child in father's sister's home, which by all accounts was an appropriate placement where the child was doing well.

Neither parent complied with their drug screening agreements. During the pendency of the case, each parent missed more than 100 of the required screenings. Of the few screenings the parents attended, each parent had some results that indicated continued drug use. Aside from the missed drug screens, the parents had at least two incidents of domestic violence, both of which appeared to have been instigated by mother. As a result of these incidents, the court limited or suspended mother's parenting time.

Petitioner filed a termination petition in September 2012, on the grounds that the conditions that led to adjudication continued to exist with no reasonable likelihood of rectification within a reasonable time under MCL 712A.19b(3)(c)(i), and that the parents failed to provide proper care or custody with no reasonable expectation of being able to provide proper

care and custody, MCL 712A.19b(3)(g). As against mother, the petition also alleged a reasonable likelihood of harm if the child was returned to mother's home under MCL 712A.19b(3)(j).

From November 2012 through May 2013, the court held two days of hearings on the statutory basis for termination and four days of hearings on the best interest of the child. The circuit court terminated both parents' rights in May 2013, nearly two years after the child first came into petitioner's care.

## II. MOTHER'S APPEAL, DOCKET NO. 316669

Mother challenges the court's determination that termination of her rights was in the child's best interests. According to mother, the court erred by failing to allow mother additional time to demonstrate her ability to manage her substance abuse and mental health issues. We disagree.

Once a circuit court has found a statutory ground for termination of a parent's rights under MCL 712A.19b(3), the court must order termination of the parent's rights if the court finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013); see also MCR 3.972(C)(1). The circuit court may consider a variety of factors in making the best interest determination, including the parent-child bond, the child's need for permanency and stability, and the relative advantages of a foster home over the parent's home. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). We review for clear error the circuit court's determination regarding the child's best interests. MCR 3.977(K).

In this case, the record supports the circuit court's findings and conclusions that termination of mother's rights was in the child's best interest. Evidence established that the bond between the child and mother was not particularly strong. The child recognized mother as her biological mother, but the child did not include mother when drawing a picture of the family. Further, there was ample evidence that mother could not provide proper care or custody for the child. Mother's psychiatrist testified that mother had not been able to manage her substance abuse issues, and a psychologist testified that mother's hostility in relationships would be very difficult for a child. The evidence of two domestic violence incidents further buttressed the psychologist's testimony.

Mother argues that she planned to enter a treatment facility, and that the circuit court erred by refusing to postpone termination until mother had completed treatment. The record does not support mother's argument. Petitioner submitted evidence throughout the proceedings that mother had attempted inpatient treatment several times, and that the treatments were unsuccessful. Although mother asserted that she had been sober for some months, she did not provide drug screens to substantiate her assertion. Moreover, the referee did not find mother's testimony fully credible. This Court gives considerable regard to the lower court's assessments of witness credibility. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). Regardless of mother's credibility, the evidence established that she failed to comply with the drug screening requirements to regain custody of the child. The termination proceedings in this case spanned seven months, and at no time during those seven months did mother attend drug screening

consistently. Accordingly, the circuit court did not err in finding that termination of mother's rights was in the child's best interests.

## II. FATHER'S APPEAL, DOCKET NO. 316670

### A. STATUTORY GROUNDS FOR TERMINATION

Father maintains that he substantially complied with the parent agency agreement, and that the circuit court erred by finding statutory grounds for termination. We review father's challenge to the circuit court's findings for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Before terminating a parent's rights, the circuit court must find by clear and convincing evidence that one or more statutory ground for termination exists. MCL 712A.19b(3); *Olive/Metts*, 297 Mich App at 40. In father's case, the circuit court found statutory grounds for termination under MCL 712A.19b(3)(c)(i) and (g). Those sections provide as follows:

(c)(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

The record supports the circuit court's findings on both grounds. Regarding the conditions that led to adjudication, father acknowledged that at the outset of the case he had substance abuse problems. Nonetheless, from May through December 2012, father missed nearly all of his required drug screens. During the pendency of the case, father had a positive drug screen for cocaine and had four positive screens for marijuana. Accordingly, the evidence established that father had not addressed his substance abuse issues. Similarly, the record supports the circuit court's conclusion that father would not be able to provide proper care and custody for a five-year-old child within a reasonable time. In particular, the court gave credence to the testimony that father would not benefit from additional time to address the substance abuse issues. Accordingly, we find no clear error in the circuit court's determination that there were statutory grounds for termination of father's rights under both MCL 712A.19b(3)(c)(i) and (g).

### B. BEST-INTEREST ANALYSIS

Father argues that the record established that he shared an extraordinarily strong bond with the child, and that the circuit court failed to take that bond into consideration in the best interest analysis. The record contradicts father's argument.

At the best interest hearings, the referee repeatedly found that the child was bonded with the father. The referee also acknowledged that disruption of the bond would likely be difficult

for the child. The referee indicated that the child's permanency plan could include some contact with father, if the adoptive parent and the agency found that continued contact was appropriate. The referee found, however, that the evidence demonstrated that father would not be able to provide proper care and custody for the child within any reasonable time, and that the child's need for permanency and stability required termination.

In particular, the referee expressed concern about father's persistent failure to comply with drug screening. The referee reviewed the repeated reminders petitioner and the court had given to father throughout the case that drug screening was central to regaining custody of the child. As the referee noted, father's failure to participate in drug screening demonstrated either that father continued to use drugs, or that he was apathetic about the need for compliance to regain custody of his child. The lack of compliance was a sufficient factor to show, by a preponderance of the evidence, that the child's best interest required termination despite the child's bond with father.

Father also argues that the referee failed to give proper weight to the child's placement with a relative. A circuit court must consider a child's placement with relatives as a factor weighing against termination. *In re Mays*, 490 Mich 993, 994; 807 NW2d 307 (2012); *Olive/Metts*, 297 Mich App at 43. In this case, the record indicates that the court's best interest analysis included careful consideration of the child's placement with the paternal aunt. The court balanced the relative placement with father's persistent failure to comply with drug screening and the child's need for stability given the child's age. After considering these factors, the court concluded that termination was in the child's best interest. Given the substantial evidence in the record concerning father's inability to comply with drug screening requirements, we find no clear error in the court's conclusion.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter